



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
CHARLEY HURST)

For Appellant: Charley Hurst, in **pro.** per.

For Respondent: **Bruce** W. Walker
Chief Counsel

James C. Stewart
Counsel

O P I N I O N

This appeal is made pursuant to section 18594 of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protest of Charley Hurst against a proposed assessment of additional personal income tax in the amount of \$107.65 for the year 1974.

Appeal of Charley Hurst

The sole issue is whether appellant qualified for head of household status in 1974.

During 1974 appellant lived with his wife until July 20, when they separated and **appellant** retained custody of their two children. Appellant received an interlocutory decree dissolving the marriage on November 11, 1974, and a final decree on March 13, 1975. Appellant claimed head of household status when he filed his personal income tax return for 1974. Respondent denied the claimed head of household status because his wife resided with him during part of 1974. Respondent did, however, allow appellant dependency credits for both his children. Appellant's protest was denied and this appeal followed.

Section 17042 of the Revenue and Taxation Code provides that in order to claim head of household status, an individual must be unmarried and maintain as his home a household that is the principal place of abode of an individual who is within specified classes of relationship. In general, although a taxpayer is separated from his spouse, he is still considered as being married for purposes of claiming head of household status, unless, at the close of the taxable year, he was legally separated from his spouse under a final decree of divorce or separate maintenance. (Appeal of Robert J. Evans, Cal. St. Bd. of Equal., Jan. 6, 1977; Appeal of Glen A. Horspool, Cal. St. Bd. of Equal., March 27, 1973; Cal. Admin. Code, tit. 1.8, reg. 17042-17043, subd. (a) (D).)

For years beginning on or after January 1, 1974, Revenue and Taxation Code section 17173 extended the benefits of head of household status to certain married individuals. This was accomplished by considering a married person as unmarried for purposes of classification as a **head** of household, where he lives separate and apart from his spouse during the entire year and maintains a home for dependent children under certain conditions. **Although** appellant, who was still legally married on the last day of 1974, did maintain a home for his two dependent children, he cannot qualify as a head of household because his spouse lived with him during part of 1974. Accordingly, respondent's action in this matter must be sustained.

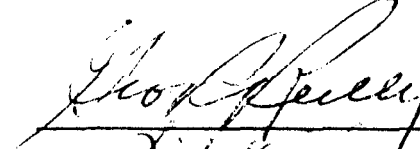
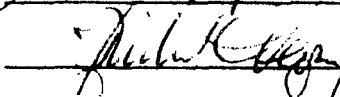
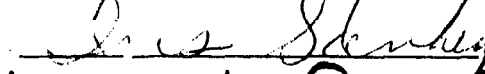
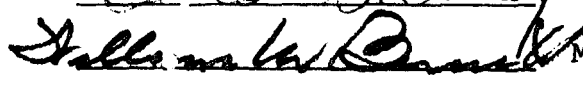
Appeal of Charley Hurst

O R D E R

Pursuant to the views expressed in the opinion of the board on file in this proceeding, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, pursuant to section 18595 of the Revenue and Taxation Code, that the action of the Franchise Tax Board on the protest of Charley Hurst against a proposed assessment of additional personal income tax in the amount of \$107.65 for the year 1974, be and the same is hereby sustained.

Done at Sacramento, California, this 4th day of May , 1978, by the State Board of Equalization.

 _____, Chairman
 _____, Member
 _____, Member
 _____, Member
_____, Member